

STATE OF MICHIGAN
COURT OF APPEALS

ROGER S. MYERS, a/k/a ROBERT S. MYERS, as
Personal Representative of the Estate of MILDRED
IRUS MYERS, Deceased,

Plaintiff-Appellee,

v

DR. JAMES ARMSTRONG,

Defendant-Appellant,

and

GARDEN CITY OSTEOPATHIC HOSPITAL and
DR. REUBEN ELIUK,

Defendants.

ROGER S. MYERS, as Personal Representative of
the Estate of MILDRED IRUS MYERS, Deceased,

Plaintiff-Appellee,

v

GARDEN CITY OSTEOPATHIC HOSPITAL and
DR. REUBEN ELIUK,

Defendants-Appellants,

and

DR. JAMES ARMSTRONG,

UNPUBLISHED
January 22, 1999

No. 197382
Wayne Circuit Court
LC No. 96-618934 NH

No. 197513
Wayne Circuit Court
LC No. 96-618934 NH

Defendant.

Before: Hoekstra, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Defendants appeal by leave granted from the trial court's order denying their motions for summary disposition pursuant to MCR 2.116(C)(10). We reverse.

Defendants first argue that the trial court erred in denying their motions for summary disposition brought on the ground that plaintiff failed to comply with the 182 day notice provision in MCL 600.2912b(1); MSA 27A.2912(2)(1), and in granting a stay of the proceedings until the expiration of the 182 day notice period. We agree. A trial court's ruling on a motion for summary disposition is reviewed de novo. *Blackwell v Citizens Ins Co of America*, 457 Mich 662, 667; 579 NW2d 889 (1998).

In *Neal v Oakwood Hosp Corp*, 226 Mich App 701; 575 NW2d 68 (1997), this Court was presented with a factual scenario nearly identical to that of the instant case. In *Neal*, this Court held that dismissal without prejudice is the appropriate remedy for noncompliance with MCL 600.2912b(1); MSA 27A.2912(2)(1). *Neal, supra*, 226 Mich App 715. Therefore, in the instant case, the trial court erred in failing to grant defendants' motions for summary disposition and in granting a stay of the proceedings until the expiration of the 182 day notice period. Plaintiff's complaint should have been dismissed without prejudice. *Id.* However, plaintiff is free to refile his cause of action immediately since the 182 day notice period expired long ago. *Id.* at 723.

Defendants also argue that MCL 600.2912b(1); MSA 27A.2912(2)(1) is constitutional. However, we need not address this issue because the trial court did not find that the statute was unconstitutional, but specifically found that MCL 600.2912b(1); MSA 27A.2912(2)(1) was "constitutionally sound." In any event, the constitutional challenges raised by plaintiff were addressed and rejected by this Court in *Neal, supra*, 226 Mich App 716-722.

Reversed.

/s/ Joel P. Hoekstra
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell